

Appl. No. 09/328,975
Amendment dated September 9, 2004
Reply to Office action December 9, 2004

REMARKS

Rejections Withdrawn:

Applicants acknowledge the withdrawal of the §102 rejections to claims 8, 10, 12-14.

Objections to the claims:

Claim 8 has been amended according to the Examiner's suggestions.

Claim 10 has been canceled.

Rejection of the claims under 35 U.S.C. §112:

Claims 1 and 3-7 have been rejected under 35 U.S.C. 112, first paragraph, for reciting "the complex" without antecedent basis.

Applicants have amended claim 1 to recite: forming a composition, then, adding a polymer to the composition to form a complex. The amendment corrects any potential double antecedent basis interpretation. Applicants believe the §112 rejection is obviated by the amendment.

Rejection of the claims under 35 U.S.C. §102:

Claims 1, 3, 4, 5, 7 and 19 have been rejected under 35 U.S.C. 102(c) as being anticipated by Lee *et al.* (U.S. Patent 5,907,777). The Action states that Lee teaches that a negatively charged targeting ligand may be added to the complex, wherein the targeting ligand associates with the polycation by charge interaction such that the complex remains negatively charged. The Action specifically quotes a section from the '777 patent:

In a preferred embodiment, an amphipathic helical oligopeptide is incorporated via charge interaction, to serve as a fusogenic peptide. Particularly preferred in this regard is a 20 amino-acid oligopeptide having the sequence GLFGAIAGFIESILELALEL (SEQ ID NO:1), where the underscored amino acids are negatively charged. ... The negative charge of the glutamic acid residues allows for charge-based interaction with the DNA/polycation complex.

However, the next line after this quotation states:

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In accordance with the present invention, the aforementioned 20-mer peptide, with its three negatively charged glutamic acid residues, was added to a positively charged DNA/polylysine complex at a DNA/polylysine/20-mer peptide ratio of 1:0.75:0.4 (wt:wt:wt).

At the stated ratio, using the 20-mer peptide defined in the previous paragraph, the complex would yield -1:+1.7:-.45 (charge:charge:charge). The resulting complex would have a net POSITIVE charge rather than a net negative charge.

Since the '777 patent explicitly recites a resulting net positively charged complex, the patent does not anticipate Applicants' claims which require a resulting net negatively charged complex.

Applicants believe the rejection has been overcome.

Claims 1, 3, 4, 5, 7 and 19 have been rejected under 35 U.S.C. 102(e) as being anticipated by Lee *et al.* (WO 97/00965).

Applicants rely on the argument previously stated to overcome this Lee *et al.* '777 publication. Claim 19 has been canceled.

Rejection of the claims under 35 U.S.C. §103:

Claims 8, 10, 12, and 14 have been rejected by the combination of Lee *et al.* (US Patent 5,908,777) and the Sigma Chemical Catalog.

Applicants have amended claim 8 to incorporate former claim 13 and have canceled claims 10, 12, and 14. Applicants believe the amended claim 8 obviates the rejection.

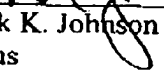
The Examiner's objections and rejections are now believed to be overcome by this response to the Office Action. In view of Applicants' amendment and arguments, it is submitted that claims 1, 3-7 and 8 should be allowable.

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as express mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date: 12/9/04


Mark Johnson